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September 17, 2024

The Honorable Gary Gensler
Chair, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Gensler:

We write to better understand the Securities and Exchange Commission's (SEC) consideration of the status of distributions of digital assets via "airdrops." Airdrops in this context are distributions of a digital asset to early users of a blockchain protocol. Airdrops used in this capacity are intended to incentivize participation on blockchain-based applications, which contributes to the continued development, initial governance, and ultimate decentralization of these networks. As such, airdrops play a crucial role in the development of a decentralized blockchain ecosystem. We are concerned that a misapplication of the securities laws will prevent this technology from achieving decentralization and its full potential.

As you know, the ethos of crypto and blockchain technology is premised in decentralization. Yet, the SEC's regulatory approach seems to make the goal of decentralization impossible to obtain. By creating a hostile regulatory environment, including making assertions about airdrops in various cases[1] and increasing warnings for additional enforcement actions,[2] the SEC is putting its thumb on the scale and precluding American citizens from shaping the next iteration of the internet.

To that end, please provide responses to the following:

1. The SEC's posture is that certain transactions in which digital assets that are given away for free or without payment satisfy the "investment of money" prong under the *Howey* Test and are therefore securities transactions. In recent court filings, the SEC has taken the position that digital assets, in and of themselves, are not securities. Does the SEC believe that giving away non-security digital assets for free implicates the *Howey* Test? If so, under what circumstances or arrangements?
2. Companies routinely offer rewards to customers through intangible representations of value, such as airline miles or credit card points, without implicating the *Howey* Test. These rewards are distributed freely to encourage engagement, just as airdrops aim

[1] In the Matter of Tomahawk, Securities Act Rel. No 10530 (Aug. 14, 2018); SEC v. The Hydrogen Technology Corporation, SDNY, Case No. 22-cv-08284; SEC v. Justin Sun et al, SDNY, Case No. 23-cv-2433
[2] *See* Uniswap Laps, Wells Notice Response, May 21, 2024, available here: https://blog.uniswap.org/wells-notice-response.pdf.

to engage users and developers in the blockchain network's growth and decentralization. How does the SEC distinguish between these rewards, given away for free, and digital assets airdropped to an individual?

3. As a network becomes further decentralized, the values of the tokens are driven by the demand for their consumptive use, akin to a commodity. Because of this, spot commodity transactions are generally treated as commercial transactions, free from direct government oversight. How might classifying these tokens as securities and subjecting each transaction to the scrutiny of the SEC impact the ability for on-chain applications to exist or function?
4. Has the SEC quantified the market impact in the event that the SEC classifies any amount of digital assets as securities? If so, please provide the analysis.
5. Has the SEC ever considered the potential for loss of economic growth and tax revenue caused by its treatment of air-dropped digital assets as securities? If so, please provide the analysis.

Given the SEC's unwillingness to establish a regulatory framework in the United States, developers have been forced to block Americans from claiming ownership of a digital asset in an airdrop. This includes individuals who may have been building on the network or otherwise contributing to its development. By prohibiting Americans from participating in airdrops, the SEC is preventing American crypto users from fully realizing the benefits of blockchain technology. The SEC's approach during your time as Chair has only ensured that the next iteration of the internet is not designed by Americans or with American values, which is not to the benefit of our constituents.

Please respond no later than September 30, 2024. We appreciate your prompt attention to our request and look forward to your response.

Sincerely,

Tom Emmer
Member of Congress

Patrick McHenry
Chairman
House Committee on Financial Services